

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TAMMY ATCHLEY,

Plaintiff,

v.

KELSO HOUSING AUTHORITY,

Defendant.

CASE NO. 22-CV-05607-BHS

TEMPORARY RESTRAINING
ORDER

THIS MATTER came before the Court on Plaintiff's Motion for a Temporary Restraining Order. Plaintiff seeks to enjoin the Kelso Housing Authority from terminating her Housing Choice Voucher and failing to pay the voucher portion of her rent. Plaintiff alleges that Defendant has refused to reasonably accommodate her in violation of anti-discrimination laws including the federal Fair Housing Act, as well as terminating her Housing Choice Voucher for activities protected by the First Amendment's Freedom of Association Clause, as well as violations of her rights under the Due Process Clause. Plaintiff alleges that, if accommodated, the Housing Authority would have to restore her voucher and allow her to continue living at her dwelling, under

1 such reasonable conditions as would be necessary to accommodate the Housing
2 Authority's interests in controlling access to the dwelling's common areas.

3 The Court has considered the pleadings, briefs and submissions including
4 Plaintiffs' Motion for Temporary Restraining Order the Declaration of Tammy Atchley,
5 and the Declaration of Lisa Waldvogel.

6 This Court is authorized to issue temporary restraining orders by Fed. R. Civ. P.
7 65(b). The standard is identical to that for a preliminary injunction. *Lockheed Missile &*
8 *Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). The
9 Court must consider (1) whether plaintiffs are likely to succeed on the merits; (2) whether
10 they are likely to suffer irreparable harm in the absence of the preliminary relief; (3) if the
11 balance of hardships tips in their favor; and (4) whether the injunction is in the public
12 interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7; 129 S.Ct. 365, 375 (2008).

13 The Ninth Circuit's "serious question" test survives *Winter*, but a showing of
14 irreparable harm is necessary. *Winter* 129 S.Ct. at 375 ("plaintiffs seeking preliminary
15 relief [must] demonstrate that irreparable injury is likely in the absence of an
16 injunction."). The Ninth Circuit held that its "serious questions" approach is consistent
17 with *Winter* and this Court should still apply that test consistent with *Winter*. *Alliance for*
18 *Wild Rockies v. Cottrell*, 635 F.3d 1127, (9th Cir. 2011). The Court may grant the
19 injunctive relief if there are serious questions going to the merits of the case and a
20 balance of hardships that tips sharply towards the plaintiff, "so long as the plaintiff also
21 shows that there is a likelihood of irreparable injury and that the injunction is in the
22 public interest." *Id.*

1 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs have
2 demonstrated the following:

3 1. Plaintiff is likely to succeed on the merits of her complaint that the Housing
4 Authority failed to reasonably accommodate her and, therefore, the termination of her
5 tenancy violates the Fair Housing Act and the Washington Law Against Discrimination.
6 Plaintiff is also likely to prevail on her claims that her Housing Choice Voucher was
7 terminated in violation of the Due Process Clause's protections requiring notice of the
8 alleged violations that form the basis of a proposed termination. Finally, Plaintiff is also
9 likely to prevail on her claim that the Housing Authority's termination of her Housing
10 Choice Voucher violated her rights to substantive due process because it was arbitrary
11 and capricious to terminate her tenancy for a violation that is not part of her rental
12 agreement, house rules, or voucher contract.

13 2. More significantly, Plaintiff will suffer irreparable harm if the Defendant is not
14 enjoined because she cannot afford other housing, cannot pay her current rent to the
15 Housing Authority, and will become homeless if evicted. Additionally, Plaintiff's tenant
16 history is likely to be irreparably harmed by the mere filing of an eviction, even if she
17 were to ultimately prevail in that action.

18 3. The balance of harms tips sharply in favor of granting the temporary restraining
19 order because when faced with a conflict between financial concerns and preventable
20 human suffering, the balance of hardship tips in the favor of preventing human suffering.
21 The Housing Authority's harm, by contrast, is minimal and they could continue to
22 receive rent from the voucher payment.

1 4. Enjoining the Housing Authority is in the public interest because the public has
2 an interest in the eradication of housing discrimination and in not increasing preventable
3 homelessness.

4 5. Since Plaintiff appears to be indigent and the Defendant is in a position to not
5 experience economic loss, no security bond is required pursuant to Fed. R. Civ. P. 65(c).
6 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's
7 Motion for a Temporary Restraining Order is GRANTED. The Court orders that the
8 Defendant is enjoined from terminating Tammy Atchley's Housing Choice Voucher, or
9 taking any future steps to evict her from her residential unit during the pendency of this
10 Order and until such time as the Court vacates this Order.

11 This Temporary Restraining Order shall be binding as provided in Fed. R. Civ. P.
12 65(d) and shall remain in effect until further order of the Court.

13 A hearing on Plaintiffs' Motion for Preliminary Injunction is set for August 29,
14 2022, at 3:30 p.m., in the Honorable Benjamin H. Settle's Courtroom, United States
15 Courthouse, Tacoma, Washington.

16 Plaintiffs provided notice of its intent to file the instant motion to the Defendant
17 under LCR 65 and that irreparable harm will result if relief is delayed. Actual notice shall
18 be given to the Defendant of this order before 5:00 p.m. on August 22, 2022.

19 Dated this 19th day of August, 2022.

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22 BENJAMIN H. SETTLE
United States District Judge